

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 578 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.

2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

M S SHAIKH

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Appearance:

MR YS LAKHANI, Advocate, for Petitioner.

MR JS BHRAHMBHATT, for the respondent.

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 11/04/97

ORAL JUDGEMENT

This petition under Article 227 of the Constitution is directed against the judgment and award dated May 29, 1993 passed by the Industrial Tribunal in Reference (IT) No.206/90, whereby the Tribunal substituted the penalty imposed by the petitioner - Corporation.

2. The petitioner workman was served with the chargesheet alleging rude behaviour of the petitioner with his superior in connection with an incident which took place on June 11 1986. The allegation against the respondent was that on that day when the respondent, serving as a driver, reported for duty and was assigned a bus with mechanical defect, the respondent had requested the Depot Mechanic to give the respondent another bus without any mechanical defect. The Depot Mechanic did not pay any heed to the said request and, therefore, the respondent got excited; the respondent then approached the In-charge Depot Manager for complaining about the aforesaid situation. The In-charge Depot Manager also insisted that the respondent should drive the bus with mechanical defect. The gravamen of the charge against the respondent was that the respondent had exhibited rude behaviour with the Depot Mechanic and the Depot Manager.

3. A departmental inquiry was held against the respondent on the basis of the aforesaid chargesheet. The Disciplinary Authority ultimately held the respondent guilty of the charge levelled against the respondent and imposed penalty withholding three increments with future effect.

4. The order of the Disciplinary Authority came to be challenged in Reference (IT) No.206/90. Legality of the inquiry was not challenged before the Tribunal. After hearing both the parties, the Tribunal found that as per admission made by the Head Mechanic he was short of hearing and the respondent has congenial habit of speaking loudly. It was also admitted by the departmental witnesses that the bus in question was defective. Under the circumstances, the misconduct of rude behaviour could not be said to such which would warrant harsh penalty of withholding three increments with future effect. In the result, the Tribunal substituted the penalty of withholding one increment without future effect.

5. Mr. Y. S. Lakhani, learned Advocate for the petitioner-Corporation submitted that once the respondent - workman did not challenge legality of the departmental inquiry before the Tribunal and the Tribunal also found that the respondent had committed misconduct, the Tribunal ought not to have substituted the penalty in exercise of powers under Section 11A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

6. It is true that the respondent workman did not

challenge the legality of the departmental inquiry and that the Tribunal found the respondent guilty of the charge of rude behaviour. That certainly did not preclude the Tribunal from examining gravity of the misconduct for the purpose of adjudging the proportionality of the penalty. The Tribunal has recorded the admission on the part of the two departmental witnesses that the bus in question was defective and the Head Mechanic was short of hearing. Under the circumstances, the behaviour on the part of the respondent should not have been magnified so as to treat the misconduct warranting penalty of depriving the respondent - driver incremental benefits in the salary with cumulative effect for three years which effect would continue till the date of his retirement and it would also adversely affect his retirement benefits. Jurisdiction of this Court under Article 227 of the Constitution of India is circumscribed by well established principle and this Court is not expected to interfere with the order of the Tribunal passed in exercise of discretion conferred by the provisions of Section 11A of the Act merely on the ground that another view was possible. The view taken by the Industrial Tribunal that the penalty imposed by the petitioner Corporation was too harsh and was shockingly disproportionate is a reasonable view and the same cannot be interfered with in exercise of extra ordinary jurisdiction under Article 227 of the Constitution.

7. In the result, the petition deserves to be dismissed and is hereby dismissed. Rule is discharged, with no order as to costs. Ad-interim stay is vacated. The petitioner - Corporation shall comply with the award of the Tribunal within three months from today.

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